

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

DEBORAH A. SHERRELL,

Civil Action File No.

Plaintiff,

2:21-CV-275-SCJ

v.

WAL-MART STORES EAST, LP
AND XYZ CORPORATION,

JURY TRIAL DEMANDED

Defendants.
_____ /

RENEWAL COMPLAINT FOR PERSONAL INJURIES

COMES NOW, Plaintiff, DEBORAH A. SHERRELL, (hereinafter referred to as “Plaintiff”), by and through her Counsel of Record, and files this Renewal Complaint of her previous civil action which was before this Court, then bearing Civil Action File No. 2:20-cv-00242-SCJ , which was properly filed and served, and which was voluntarily dismissed without prejudice on November 1, 2021. This Renewal Complaint is being filed within the six-month time period allowed for renewal. For this Renewal Complaint for Personal Injuries against the above-named Defendant, Plaintiff states as follows:

JURISDICTION AND VENUE

1.

Plaintiff is a citizen and resident of the State of Georgia.

2.

The Defendant, WAL-MART STORES EAST, LP (hereinafter “Defendant Wal-Mart”) is a Foreign Limited Partnership that transacts business in Georgia. Defendant Wal-Mart may be served through its registered agent, The Corporation Company (FL), at 106 Colony Park Drive, Suite 800-B, Cumming, Forsyth County, Georgia 30040. Defendant Wal-Mart is subject to the Jurisdiction and Venue of this Court pursuant to O.C.G.A. § 9-11-4(e)(1).

3.

Defendant XYZ CORPORATION is unidentified and unknown at this time.

4.

This Court has jurisdiction in this litigation pursuant to 28 U.S.C. § 1332, diversity of citizenship. Plaintiff is a citizen of the State of Georgia. Defendant is a Foreign Limited Partnership with its principal place of business at 708 SW 8th Street Bentonville, Arkansas 72716. The amount in controversy exceeds \$75,000.00, exclusive of interests and costs, as specific in 28 U.S.C. § 1332.

5.

By virtue of the facts alleged herein, venue of this action is properly laid in this Court pursuant to 28 U.S.C. § 1391 (c).

STATEMENT OF FACTS

6.

On or about October 20, 2018, Plaintiff was an invitee at Defendant Wal-Mart's store located at 3826 Cobb Parkway NW Acworth, GA 30101. At checkout, Plaintiff was struck under the chin by a box as a Wal-Mart employee removed it from her shopping cart.

7.

Under Georgia law, “[w]here an owner or occupier of land, by express or implied invitation, induces or leads others to come upon his premises for any lawful purpose, he is liable in damages to such persons for injuries caused by his failure to exercise ordinary care in keeping the premises and approaches safe.” O.C.G.A. § 51-3-1.

8.

Acts or omissions of an owner of the premises can create a dangerous condition on the premises and such acts or omissions constitute active negligence. See, Johnson v. Kimberly Clark, 233 Ga.App. 508 (1998). In cases where an injury arises on a premises as a result of the active negligence of the owner or its agents, the inquiry to be made is whether the owner could reasonably foresee that his actions or inactions would cause injury to the plaintiff. See, Brownlee v. Winn-Dixie

Atlanta, Inc., 240 Ga. App. 368 (1999). Here, the active negligence of Defendant Wal-Mart's employee constitutes negligence per se.

9.

Defendant Wal-Mart is liable for the actions of their employee under the doctrine of Respondeat Superior.

10.

As a direct result of the active negligence of Defendant Wal-Mart's employee, Plaintiff suffered injuries to her jaw and neck, requires neck surgery, and has incurred medical treatment expenses in an amount in excess of \$216,747.09.

11.

This is a clear liability case caused by Defendants' negligent conduct with no bona fide controversy related to the fact that: 1) Defendant Wal-Mart owns and/or operates the premises where the incident in question occurred; 2) Plaintiff was injured as a result of the active negligence of one of Defendant' Wal-Mart's employee which constitutes negligence per se 3) Defendant's Wal-Mart is liable for their employees actions under the doctrine of Respondent Superior 4) Defendant Wal-Mart had a duty to exercise ordinary care in keeping the premises and approaches to the store safe; 5) Defendant Wal-Mart breached that duty; and 6) Defendants Wal-Mart's breach of that duty caused injury to the Plaintiff.

12.

Defendants are indebted to Plaintiff for past, present and future treatment expenses; past, present and future pain and suffering; past, present and future loss of ability to enjoy life; lost wages; and all other damages allowed by Georgia law.

WHEREFORE, Plaintiff having set forth the facts and circumstances in support of his cause of action, respectfully requests that she be GRANTED:

- (a) A trial by jury;
- (b) Compensatory damages in an amount to be determined at trial; and
- (c) Such other relief as this Court may deem fair and reasonable.

This 22nd day of December, 2021.

Respectfully submitted,

FOY & ASSOCIATES P.C.

/s/ Aaron L. Michelman

Aaron L. Michelman

Georgia State Bar No. 143175

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The undersigned counsel certifies that the foregoing **Renewal Complaint for Personal Injuries** has been prepared with one of the font and point selections approved by the court in LR 5.1B.

/s/ Aaron L. Michelman
Aaron L. Michelman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the Plaintiff's **RENEWAL COMPLAINT FOR PERSONAL INJURIES** with the Clerk of Court using CM/ECF system, via electronic mail, and/or by depositing same in the United States Mail, proper postage prepaid, addressed to attorneys of record as follows:

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This 22nd day of December, 2021.

Respectfully submitted,
FOY & ASSOCIATES, P.C.

/s/ Aaron L. Michelman
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